

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3089 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAHANGIR MAHEMUDBHAI MALEK

Versus

STATE OF GUJARAT

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Appearance:

MR RS SANJANWALA for Petitioner

MR KC SHAH, A.G.P., for Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner, brother of detenu Sabbir @ Sabbo Mahemudbhai Malek, has brought under challenge the detention order dated 6th April, 1996 rendered by the second respondent under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as

"the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that the detenu has been carrying on criminal and anti-social activities of dealing in country and foreign liquor and creating atmosphere of fear. The following offences have been registered against the detenu in Bharuch City "A" division, Bharuch Rural and Bharuch City "B" Division Police Stations :

1. CR III 698/95 U/ss. 66(1)B, 65A, E, 83 & 81 of dt.28.6.95 the Bombay Prohibition Act. 288 bottles of foreign liquor valued at Rs. 37,800/-. Pending in Court. Enlarged on bail of Rs.2000/-.
2. CR III 477/95 U/ss. 66B, 65EA, 81, 116B of the dtd.25.9.95 Bombay Prohibition Act and Sec. 98, 99 of the Motor Vehicles Act. 254 bottles of English liquor valued at Rs.40,050/-. Enlarged on bail in the sum of Rs.5000/-. Pending in Court.
3. CR III 13/96 U/ss. 66B, 65E, 81 of the Bombay dtd. 6.1.1996 Prohibition Act. 12 bottles of foreign liquor valued at Rs.1920/-. Enlarged on bail in the sum of Rs.2000/-. Pending in Court.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of witnesses have been relied upon. They indicate about the incidents enumerated in the ground of detention. All the incidents are stated to have occurred during the month of January & February, 1996. They indicate threatening administered to the concerned witnesses, their beating in the public place, as the case may be, and causing atmosphere of fear amongst the witnesses, leading to the dispersing of the people collected on such occasions.

4. It is on the aforesaid incidents that the Detaining Authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been

stamped as a boot-legger within the meaning of Section 2(b) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the order of detention on number of grounds, inter alia on the ground that the genuinness of the claim of privilege made by the Detaining Authority under Section 9(2) of the PASA Act vis-a-vis the statements of the witnesses is under doubt. According to his submission in fact the witnesses in their statements have said that their addresses, names, place of business, etc. should not be disclosed to the detenu as they were apprehending danger to their lives and the property. Such apprehension or fear expressed by the witnesses in their statement was before the Authority who recorded the same. The Detaining Authority has not recorded the Statements. The Detaining Authority itself was required to be subjectively satisfied with the claim of privilege which it was seeking to make was justified. Unfortunately, below every statement the concerned authority has written one word, namely, "verified" and based on such endorsement made by the authority concerned, the Detaining Authority has claimed privilege.

6. In support of the aforesaid submission to the effect that there is no satisfaction on the part of the concerned Authority as also the Detaining Authority about the genuinness regarding the claim of privilege made by the Detaining Authority under Section 9(2) of the PASA Act, reference has been made to a decision of this Court in Jakirbhai Rahimbhai Nagori V/s. District Magistrate, Mehsana and others, reported in 1996 (1) G.L.H. 300, which in turn has made reference to a decision of the Division Bench of this Court in the case of Koli Ashwin V/s. State of Gujarat in Special Criminal Application No.1812 of 1993 dated 12.9.1994. The observations of the Division Bench have been reproduced in Jakirbhai's case (Supra) and they also might be referred to here :

"However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the

detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy.S.P., who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material.

About what has been verified, what were the instructions and to what extent the verifying authority himself was satisfied about the apprehension expressed, there is nothing either in the grounds of detention along with its compilation or in the contemporaneous record from the office of the detaining authority."

7. Having heard the learned A.G.P. for the State, I am of the opinion that the aforesaid decision clinches the issues in favour of the petitioner. The result is that it shall have to be found that the continued detention of the detenu is, therefore, required to be snapped by declaring it illegal.

8. The continued detention of the detenu - Sabbir Sabbo Mahemudbhai Malek is hereby quashed and set aside. The detenu Sabbir @ Sabbo Mahemudbhai Malek shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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